



# Iowa General Assembly

## 2010 Legal Updates

Legislative Services Agency – Legal Services Division

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**Purpose.** *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

### **BOARDS AND COMMISSIONS: QUORUM REQUIREMENTS**

Filed by the United States Supreme Court

June 17, 2010

New Process Steel, L.P. v. National Labor Relations Board

No. 08-1457

<http://www.supremecourt.gov/opinions/09pdf/08-1457.pdf>

**Background.** The National Labor Relations Board (Board) is an independent federal agency which administers the National Labor Relations Act, the primary law governing relations between unions and employers. The Board's five members are nominated to five-year terms by the President and must be confirmed by the Senate. The Board is authorized by statute to delegate to a group of three or more members *any or all* of the powers which it may itself exercise [the delegation clause]. Three members "at all times" constitutes a quorum of the Board, except that two members constitute a quorum of any designated group. Anticipating an extended period of three vacancies, the Board created a three-member group and vested all of its powers in that group. The vacancies did occur and the Board group continued to function with two members; a quorum of the group existed, but a quorum of the Board itself did not.

**Issue.** The issue considered by the Supreme Court (Court) was whether, following a lawful delegation of the Board's powers to a three-member group, two members could continue to exercise that delegated authority once the group's (and the Board's) membership fell to two.

**Conclusion.** In a 5-4 decision the Court ruled that the group must maintain a membership of three (a quorum of the Board itself) in order to exercise the delegated authority. Justice Stevens wrote the opinion, joined by Chief Justice Roberts and Justices Scalia, Thomas and Alito. The Court cited a 19th century Supreme Court decision for the proposition that "...a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be...insignificant" and concluded that reading the delegation clause to require that the Board's delegated power be vested continuously in a group of three members is the only way to harmonize and give meaningful effect to all of the statutory provisions relating to quorums and requiring three members "at all times" for the Board to act.

The Court concluded that the delegation clause "...does not authorize the Board to create a tail that would not only wag the dog, but would continue to wag after the dog died."

**Dissent.** Justice Kennedy wrote in dissent, joined by Justices Ginsburg, Breyer, and Sotomayor. The dissent stated that the statutory organization of the Board indicated a legislative intent "...which must be to ensure orderly operations when the Board is not at full strength as well as efficient operations when it is..." and contended that legislative intent was best served by upholding the actions of the Board. The dissent further stated that "in interpreting a statute a court should always turn first to one, cardinal canon before all others... [C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says." The dissent concluded that nothing in the statute suggested that a delegation to a three-member group expires when one member's seat becomes vacant.

**Impact on Iowa Law.** For agencies headed by boards or commissions in Iowa government, Iowa Code §17A.2(1) states, in part: "Unless otherwise provided by statute, no less than two-thirds of the members eligible to vote of a multimember agency constitute a quorum authorized to act in the name of the agency." That requirement was made effective in 1975. Since that time, it has become common to actually specify a quorum requirement in the board's or commission's enabling Act; that quorum is generally set as a majority of the members. The United States Supreme Court's decision relating to quorum requirements for federal boards and commissions, while specific Iowa statutes often provide that a board's majority constitutes a quorum not binding on Iowa government, provides judicial insight concerning quorum requirements.

The decision establishes the principle that a statutory quorum requirement will be strictly construed and statutory authority to delegate agency functions to a subcommittee does not authorize that subcommittee to continue to operate when the overall quorum requirement is no longer met.

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